IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC. NO.66322 M OF 2006

DATE OF DECISION: NOVEMBER 19, 2007

Amrit Kaur and others

.....Petitioners

VERSUS

State of Punjab and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. H. S. Dhandi, Advocate,
for the petitioners.

Mr. Shailesh Gupta, DAG, Punjab,
for respondent No.1.

Mr. Bhavyadeep Walia, Advocate,
for respondent No.2.

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RANJIT SINGH, J.

Grievance of the petitioners is that the Magistrate is continuing with the proceedings on a complaint filed under Section 3(x) and (xi) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “the Act”), though the offence is triable only by Special Court and hence, the proceedings be quashed being without jurisdiction.

Respondent No.2 filed a complaint (Annexure P-1) against the petitioners alleging an offence under Section 3 of the Act. During the pendency of this complaint, the petitioners approached this Court for grant of anticipatory

bail. The petitioners were permitted to furnish bail bonds to the satisfaction of the trial Court. The Magistrate continued with the recording of evidence. While the Magistrate was in process of recording of evidence, the present petition is filed alleging that Magistrate can not competently continue with the recording of evidence after summoning and has to commit the case before Special Court as the offence under the Act is triable by Special Judge. It is specifically so stated by the petitioners in Para 8 of the petition. According to the petitioners, after their summoning, the duty of the Magistrate was to commit the offence to the Court of Sessions but the learned Judicial Magistrate is recording the evidence and proceeding in the complaint illegally without jurisdiction.

Notice of motion was issued in this case and the respondents have put in appearance. Despite repeated opportunities, no reply has been filed on behalf of respondent No.2. On September 7, 2007, the case was adjourned to 19.11.2007, subject to payment of Rs.500/- as costs as the reply was not filed on behalf of the respondents. When the case is taken up today, counsel for respondent No.2 states that he does not wish to file reply as purely a legal issue is involved in this petition and he is prepared to make submissions in this case. The case is accordingly heard.

Counsel for the respondents says that he would not have any objection if the directions are issued by this Court to the Magistrate to commit the case for trial by a Special Court, as is the prayer made in the petition. Learned counsel appearing for the petitioners, however, would change his stand a bit and prays for quashing the complaint itself on the ground that the proceedings in

this case before the Magistrate are without jurisdiction. In support of his submission, he has referred to the case of ***Gangula Ashok Vs. State of A.P.,*** 2000(1) R.C.R. (Criminal) 797 and ***Arun Balwantrao Mahurkar and another Vs. State of Maharashtra and others,***, 2004 (1) R.C.R. (Criminal) 558. In Gangula Ashok's case (supra), the Hon'ble Supreme Court has held that Special Court is to try the offences under Section 3 of the Act and such Court can take cognizance of the offence when the case is committed to it by the Magistrate in accordance with the provisions of Cr.P.C. It is further viewed that the charge-sheet or the complaint can not straightway be filed before the Special Court, when the Sessions Judge has been designated as a Special Court. In Arun Balwantrao Mahurkar's case (supra), it is held that the Magistrate can not issue process and he is to follow the procedure of committal in case of offence under Section 3 of the Act. Both the judgments cited by learned counsel for the petitioners would not go to support the submission made by him that complaint under such circumstances can be quashed. What can be gisted out of the above law as laid down, appears to convey is that the Magistrate has to follow a committal proceedings and thereafter commit the case to Special Court for trial when the complaint relates to an offence under the Act.

Counsel appearing for respondent No.2 has been fair in urging that Magistrate can be directed to act in accordance with law. The prayer made by counsel for the petitioners for quashing of the complaint can not, thus, be accepted. However, there may be some substance in the submission of the counsel that Magistrate is only to commit the case before a Special Court and can not continue with

recording of evidence.

The present petition is accordingly disposed of with the direction to the Magistrate to act in accordance with law in terms of the judgments afore-mentioned and commit the case for trial by a Special Court. Any order passed by the Magistrate contrary to this legal position shall be deemed to have been set-aside/over-ruled.

November 19, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**